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22 Attorneys for Plaintiffs MARCO DIMERCURIO,
23 and JOHN LANGLITZ

24 *Additional Counsel Listed on Following Page*

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA

26 IN AND FOR THE COUNTY OF CONTRA COSTA

27 MARCO DIMERCURIO, and JOHN
28 LANGLITZ, on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

MARTINEZ REFINING COMPANY LLC, and
DOES 1 THROUGH AND INCLUDING 25,

Defendants.

Case No. MSC20-01257

[ASSIGNED FOR ALL PURPOSES TO
JUDGE CHARLES S. TREAT, DEPARTMENT 12]

**ORDER AFTER HEARING
GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ATTORNEYS'
FEES AND COSTS**

Date: January 18, 2024
Time: 9:00 A.M.
Dept.: 12
Judge: Honorable. Charles S. Treat

Complaint Filed: July 2, 2020

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Co-Counsel for Plaintiffs MARCO DIMERCURIO,
and JOHN LANGLITZ

1 Plaintiffs Marco DiMercurio and John Langlitz’s Motion for Final Approval of Class
2 Action Settlement and Attorneys’ Fees and Costs came on for hearing on January 18, 2024 at
3 9:00 a.m. in Department 12 before Honorable Charles Treat of the Contra Costa Superior Court.
4 David Pogrel appeared as counsel for Plaintiffs. Gary Lafayette and Ingrid Ahuja appeared as
5 counsel for Defendant.

6 After full consideration of the submissions and arguments, and the entire record of this
7 matter, it is the conclusion of this Court that Plaintiffs’ Motion for Final Approval of Class
8 Action Settlement and Attorneys’ Fees and Costs is **GRANTED**. The Court hereby adopts its
9 tentative Ruling as the Order of the Court, attached hereto as **Exhibit A**.

10 **IT IS SO ORDERED.**

11
12 Dated: _____, 2024

13 HONORABLE CHARLES S. TREAT
14 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

15 **APPROVED AS TO FORM AND CONTENT:**

16 Dated: January 25, 2024

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

17
18
19 By: _____



KRISTINA L. HILLMAN
JANNAH V. MANANSALA
ROBERTA D. PERKINS
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Attorneys for Plaintiffs MARCO DIMERCURIO,
and JOHN LANGLITZ

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Dated: January 25, 2024

LEONARD CARDER, LLP



By: DAVID POGREL
AMANDA EATON

Co-Counsel for Plaintiffs
MARCO DIMERCURIO, and JOHN LANGLITZ

Dated: January 25, 2024

LAFAYETTE & KUMAGAI LLP



By: GARY T. LAFAYETTE
BRIAN H. CHUN
INGRID AHUJA

Attorneys for Defendant
MARTINEZ REFINING COMPANY LLC

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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 01/18/2024

GENERAL INSTRUCTIONS FOR CONTESTING TENTATIVE RULINGS IN DEPT. 12

NOTE PROCEDURE CAREFULLY

The tentative ruling will become the Court’s ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule 3.43(2)*.)

Note: In order to minimize the risk of miscommunication, Dept. 12 prefers and encourages fax or email notification to the department of the request to argue and specification of issues to be argued – with a **STRONG PREFERENCE FOR EMAIL NOTIFICATION**. Dept. 12’s Fax Number is: (925) 608-2686. Dept. 12’s email address is: dept12@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 12 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court’s ruling, a copy of the Court’s tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

1. 9:00 AM CASE NUMBER: C22-01643
CASE NAME: NICHOLS VS. BINA
***HEARING ON MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO CCP 473(B)**
FILED BY: BINA, MICHAL
TENTATIVE RULING:

Defendants Michal Bina and CalProHome LLC move to set aside the entries of default against them. They contend that service of process on them was insufficient. The motion is **denied** as to CalProHome. It is conditionally **granted** as to Bina, on condition that he file a supplemental statement by January 25, 2024 attaching his proposed answer. Bina’s motion is **continued** to that date to ascertain compliance.

This is a lawsuit by plaintiff Nichols alleging defective home repair work. The contracts attached to the complaint are unclear as to whether the contracting entity was CalProHome or Bina personally, but it is uncontested that Bina was the principal of CalProHome.

Bina, suing as “doing business as CalProHome”, filed a small claims case against Nichols. By order of

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MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 01/18/2024

12. 9:00 AM CASE NUMBER: MSC20-01257
CASE NAME: MARCO DIMERCURIO VS. MARTINEZ REFINING COMPANY LLC
***HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
FILED BY:
TENTATIVE RULING:

Plaintiffs Marco DiMercurio and John Langlitz move for preliminary approval of their class action and PAGA settlement with defendant Martinez Refining Co. LLC. They also move for approval of their attorney's fees, litigation costs, administration costs, and representative payment.

Since preliminary approval was granted, the administrator has mailed notices to 283 class members. After follow-up, no notices were non-deliverable. No objections or requests to opt out have been received.

The motion is **granted**.

A. Background and Settlement Terms

Defendant operates an oil refinery in Martinez. Plaintiffs are employed there as Operators.

The original complaint was filed on July 2, 2020 as a class and PAGA action. It was amended twice, including deletion of one named plaintiff and modification of the claims asserted. The second amended complaint successfully withstood demurrer.

The settlement will create a gross settlement fund of \$1,224,210. The class representative payments to the plaintiffs will be \$7,500 each. Attorney's fees will be \$408,070 (one-third of the settlement). Litigation costs are \$17,522, slightly below the prior estimate. The settlement administrator's costs are \$11,500. PAGA penalties will be \$25,000, resulting in a payment of \$18,750 to the LWDA. The net amount paid directly to the class members will be about \$753,358. The fund is non-reversionary. There are 283 class members, slightly fewer than previously estimated. Based on the class size, the average net payment for each class member is approximately \$2,660, not including distribution of PAGA penalties. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time.

The entire settlement amount will be deposited with the settlement administrator within 30 days after the effective date of the settlement.

The proposed settlement will certify a class of all current and former non-exempt employed at Defendants' California facilities between February 1, 2020 and August 31, 2022. The latter cutoff date was set because after that date, defendant agreed to modify its practices to eliminate the alleged violations. For PAGA purposes, the period covered by the settlement is the same.

The class members will not be required to file a claim. Funds will be apportioned to class members based on the number of workweeks worked during the class period.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
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JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 01/18/2024

Settlement checks not cashed within 180 days will be cancelled. If the unpaid remainder exceeds \$25,000, it will be redivided and distributed to locatable class members. If less than that amount, the funds will be directed to the East Bay Community Law Center.

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. Under recent appellate authority, the limitation to those claims with the “same factual predicate” as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 (“A court cannot release claims that are outside the scope of the allegations of the complaint.”) “Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint’ is impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. The substantive reach of the case is limited to a particular form of alleged violation, namely defendant’s failure to pay operators for times when they were on call and subject to being called in to cover needed shifts. Plaintiffs contend that even if employees were not called in, the fact of being on call limited their choice of activities. Defendant contends that no payment was legally required for times when employees were not actually called in to report for duty.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include “stacking” of violations, the law may only allow application of the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”)) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, *e.g.*, *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

Counsel state that notice of the settlement agreement has been provided to LWDA.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is “fair, reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement.” (See also

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HEARING DATE: 01/18/2024

Amaro v. Anaheim Arena Mgmt., LLC, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. The Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees." (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "the court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the "common fund" theory, or \$408,070. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar (combined from both law firms) at \$709,317, representing an implied "negative" (actually "below one") multiplier of 0.58. They based this amount on a total of 1,107 hours. No adjustment from the one-third fee is necessary. The attorney's fees are reasonable and are approved.

The requested representative payments of \$7,500 for the named plaintiffs were deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiffs have provided a declaration in support of their request. They have devoted substantial time to this case. They point out that they executed a broader release than the class as a whole, but do not identify any particular claims of value that they may have. They also risk damage to her reputation and more difficulty in obtaining

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MARTINEZ, CA
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employment. The representative payments are approved.

Litigation costs of \$17,522 (mostly mediation and filing fees) are reasonable and are approved.

The settlement administrator's costs of \$11,500 are reasonable and are approved.

D. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motion is granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court. Pursuant to Code of Civil Procedure § 384(b), after the settlement is completely implemented, the judgment must be amended to reflect the amount paid to the *cy pres* recipient.

13. 9:00 AM CASE NUMBER: MSC20-01308
CASE NAME: PETTAS VS GATES
***HEARING ON MINOR'S COMPROMISE: PETITION FOR APPROVAL OF MINOR COMP AS TO**
PANAGIOTIS PETTAS FILED ON 10/17/23
FILED BY: PETTAS, PANAGIOTIS
TENTATIVE RULING:

The proposed settlement for a disabled plaintiff is **approved**.

1 **PROOF OF SERVICE**
2 **(CCP §1013)**

3 I am a citizen of the United States and resident of the State of California. I am employed
4 in the County of Alameda, State of California, in the office of a member of the bar of this Court,
5 at whose direction the service was made. I am over the age of eighteen years and not a party to
6 the within action.

7 On February 12, 2024, I served the following documents in the manner described below:

8 **ORDER AFTER HEARING GRANTING PLAINTIFFS' UNOPPOSED MOTION**
9 **FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
10 **AND ATTORNEYS' FEES AND COSTS**

- 11 BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy
12 through Weinberg, Roger & Rosenfeld's electronic mail system from
13 maranda@unioncounsel.net to the email addresses set forth below.

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Co-Counsel for Plaintiffs
MARCO DIMERCURIO,
and JOHN LANGLITZ

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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on February 12, 2024 at Emeryville, California.

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